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IV. Group IV, claims 16-19, drawn to a method for making menaquinone-7-8, classified in class 435, subclass 170, for example.

The Examiner states that the inventions are distinct, each from the other because the inventions of the Groups I-IV are directed to different inventions which are not connected in design, operation, and/or effect. The Examiner further states that these inventions are independent since they are not disclosed as capable of use together, they have different modes of operation, they have different functions, and/or they have different effects. The Examiner also states that the several inventions are independent and distinct, each from the other because they have acquired a separate status in the art as separate subject for inventive effect and require independent searches, as indicated by the different classification. Finally, the Examiner states that the search for each of the inventions is not coextensive particularly with regard to the literature search, and that a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Therefore, the Examiner concludes that restriction for examination purposes as indicated above is proper.

In response, applicants hereby elect, with traverse, the claims of Group I, specifically claims 1-5.

Applicants, however, respectfully request that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application.

First, the inventions of the cited Groups are not independent.

Under MPEP §802.01, "independent" means there is no disclosed relationship between the subjects disclosed. Group I claims a novel deep-sea bacterium. Group II claims a process for the preparation of alcoholic extract utilizing the deep-sea bacterium of Group I. Group III claims a method for enhancing color utilizing the extract of Group II. Group IV claims a process for preparing menaquinone-7,8 utilizing the deep-sea bacterium of Group I. Groups I, II, III and IV are necessarily related because the deep-sea bacterium of Group I is required for the processes of Groups II and IV and the method of Group III to achieve the desired results. Applicants therefore maintain that the cited Groups are not "independent".

Finally, under MPEP § 803, there are two criteria for a proper restriction requirement: 1) the invention must be independent or distinct, and 2) there must be a serious burden on the Examiner if restriction is required. MPEP §803 unambiguously provides that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent and distinct inventions." Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction is not required among Groups I-IV because a search of the prior art relevant to any of the claims of any of the Groups would necessarily turn up the prior art relevant to the claims of the remaining Groups. There is therefore no burden on the Examiner to examine Groups I-IV together in the subject application, and applicants submit that the Examiner must examine the entire application on the merits.

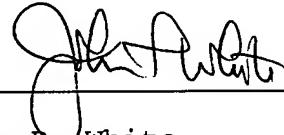
In view of the foregoing, applicants maintain that the August 27, 2004 restriction requirement is not proper under 35 U.S.C. § 121 and respectfully request that the Examiner reconsider and withdraw the requirement.

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If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

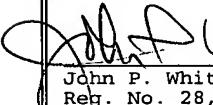
No fee is deemed necessary in connection with the filing of this Response. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

 9/22/04
John P. White
Reg. No. 28,678

Date